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Public Prosecutor v Oi Lai Seng

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HIGH COURT (IPOH) — CRIMINAL TRIAL NO 45–37 OF 2002
CHOONG SIEW KHIM JC
24 JANUARY 2011

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Criminal Law — Penal Code — s 302 — Murder — Whether prosecution had proved its case beyond reasonable doubt — Whether defendant was capable of forming intention to commit murder — Penal Code ss 300(c) & 302

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Evidence — Witness — Credibility of — Eyewitnesses testimony of murder — Whether evidence consistent and credible

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On 25 May 2001, Ibrahim bin Selamat ('the deceased') and his family, comprising of his wife and two daughters, were travelling from Kulim to Johor by car. The accused, who was armed with a pistol, had entered the car through the right back door while the car was parked at a rest area. After identifying himself as a robber and firing a warning shot, the accused, had ordered the deceased's wife who was sitting in the front passenger seat to hand over to him

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all the gold items she wore together with other valuables. The accused had also ordered the deceased to hand over his wallet to him. Thereafter, the accused had instructed the deceased to stop the car on the right shoulder of the highway, and ordered the family to alight from the car. According to the deceased's wife and daughter, the deceased had then asked the accused to return

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to him his identity card and driving licence that was in his wallet. At that point in time the two eyewitnesses to the incident heard the sound of two shots being fired, which led to the deceased collapsing in his wife's arms. The accused drove off in the car, leaving the family by the side of the highway. The postmortem report indicated that the deceased died as a result of the gunshot wound to his

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chest. On 13 July 2001, the accused was arrested in Kedah. The deceased's wife and daughter identified the accused at an identification parade. The accused was charged with the murder of the deceased, an offence under s 302 of the Penal Code ('Code'). After hearing the case for the prosecution the trial judge called the accused to enter his defence. In his defence the accused admitted that

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he had forced his way into the deceased's car and had robbed the deceased and his family while in a dreamy state after having smoked *syabu*. The accused also testified that he did not know why and how he fired the two shots or how the deceased was hit by a shot.

Held, convicting the accused of murder under s 302 of the Code and sentencing him to death:

(1) The deceased's wife and daughter were credible witnesses. They provided consistent credible evidence of the events that led to the death of the deceased (see para 8).

(2) The fact that the accused was carrying a loaded firearm in the course of robbing the deceased and his family coupled with the evidence and circumstances of the present case, showed that the accused intended to and had inflicted the gunshot injury, which was sufficient to cause the death of the deceased under s 300(c) of the Code as relied upon by the prosecution (see para 22).

(3) Even though the accused attempted to justify his action by blaming his behaviour on his state of panic and fear caused by syabu, the essence of the defence corroborated the testimony of the material witnesses. From the evidence it was found that there was no reason for the accused to panic and that contrary to his allegation of the syabu effect on him there was purposeful deliberation and intention on his part when he robbed the deceased and his family of valuables and made off in their car after letting off two shots. The deceased did not provoke or resist and there was no necessity to fire any shot in such circumstances. The conduct of the accused before, during and after the commission of the offence was consistent with the conduct of one who was conscious of what he was doing so as to be capable of forming the intention defined under s 300(c) of the Code (see para 31).

[Bahasa Malaysia summary

Pada 25 Mei 2001, Ibrahim bin Selamat ('si mati') dan keluarganya, yang terdiri daripada isterinya dan dua orang anak perempuan, sedang dalam perjalanan dari Kulim ke Johor dengan menaiki kereta. Tertuduh, yang bersenjatakan pistol, telah memasuki kereta melalui pintu belakan sebelah kanan semasa kereta tersebut berhenti di parkir kawasan rehat. Selepas mengenalkan dirinya sebagai pencuri dan melepaskan tembakan amaran, tertuduh telah mengarahkan isteri si mati yang sedang duduk di tempat duduk penumpang bahagian depan untuk menyerahkan kepadanya semua barangan kemas yang dipakainya bersama barang berharga yang lain. Tertuduh juga mengarahkan si mati menyerahkan dompetnya kepadanya. Berikutan itu, tertuduh telah mengarahkan si mati menghentikan kereta di bahagian tepi kanan jalan raya, dan mengarahkan keluarga tersebut keluar dari kereta. Menurut isteri dan anak perempuan si mati, si mati kemudian meminta tertuduh memulangkan kad pengenalan dan lesen memandunya yang terdapat dalam dompetnya. Pada masa itu dua orang saksi kejadian mendengar dua tembakan dilepaskan, yang membawa kepada si mati rebah dalam dakapan isterinya. Tertuduh kemudian beredar dengan kereta tersebut, meninggalkan

keluarga itu di tepi jalan raya. Laporan bedah siasat menunjukkan bahawa si mati telah meninggal dunia akibat daripada luka tembakan di dadanya. Pada 13 Julai 2001, tertuduh telah ditangkap di Kedah. Isteri dan anak perempuan si mati telah mengenalpasti tersebut di barisan pengecaman. Tertuduh telah dituduh membunuh si mati, satu kesalahan di bawah s 302 Kanun Keseksaan ('Kanun'). Selepas mendengar kes pendakwaan hakim perbicaraan memanggil tertuduh memasukkan pembelaannya. Dalam pembelaannya tertuduh mengaku bahawa dia telah memasuki kereta si mati dan merompak si mati dan keluarganya selepas dia khayal menghisap syabu. Tertuduh juga memberi keterangan bahawa dia tidak mengetahui kenapa dan bagaimana dia telah melepaskan dua tembakan atau bagaimana si mati terkena tembakan itu.

Diputuskan, mensabitkan tertuduh kerana membunuh di bawah s 302 Kanun dan menjatuhkan hukuman mati ke atasnya:

(1) Isteri dan anak perempuan si mati merupakan saksi-saksi yang boleh dipercayai. Mereka telah mengemukakan keterangan konsisten yang boleh dipercayai berhubung kejadian yang membawa kepada kematian si mati (lihat perenggan 8).

(2) Hakikat bahawa tertuduh membawa senjata yang berisi peluru semasa merompak si mati dan keluarganya bersama keterangan dan keadaan kes ini, menunjukkan bahawa tertuduh berniat untuk dan telah mengakibatkan kecederaan tembakan itu, yang merupakan sebab mencukupi untuk menyebabkan kematian si mati di bawah s 300(c) Kanun seperti yang diguna pakai oleh pendakwaan (lihat perenggan 22).

(3) Walaupun tertuduh cuba menjustifikasikan tindakannya dengan menyalahkan kelakuannya yang dalam keadaan panik dan takut disebabkan syabu, intipati pembelaan menyokong testimoni saksi-saksi material. Berdasarkan keterangan adalah didapati bahawa tiada sebab untuk tertuduh panik dan bercanggah dengan pengataannya tentang kesan syabu ke atasnya terdapat sikap sengaja dan niat di pihaknya semasa dia merompak barang berharga si mati dan keluarganya dan kemudian beredar dengan kereta mereka selepas melepaskan dua tembakan. Si mati tidak memprovokasikan atau melawan dan tidak perlu tembakan dilepaskan dalam keadaan sedemikian. Perbuatan tertuduh sebelum, semasa dan selepas kejadian kesalahan berlaku adalah konsisten dengan perlakuan seseorang yang sedar tentang apa yang mampu dilakukannya sehingga membentuk niat sepertimana ditafsirkan di bawah s 300(c) Kanun (lihat perenggan 31).]

Notes

For cases on credibility of witness, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3029–3086.

For cases on section 302 penal code, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1698–1776.

Cases referred to

Balachandran v PP [2005] 2 MLJ 301; [2005] 1 CLJ 85, FC (refd)
Chan Kwee Fong v PP [2010] 1 MLJ 411; [2010] 3 CLJ 671, CA (refd)
Looi Kow Chai & Anor v PP [2003] 2 MLJ 65; [2003] 1 CLJ 734, CA (refd)
PP v Norazam Ibrahim [2006] 8 CLJ 462, HC (refd)
Sainal Abidin Mading v PP [1999] 4 MLJ 497; [1999] 4 CLJ 215, CA (refd)
Tan Chee Wee v PP [2004] 1 SLR 479, CA (refd)

Legislation referred to

Criminal Procedure Code ss 180(1), (3), (4), 182A(1), (2)
Evidence Act 1950 s 27
Penal Code ss 299, 300, 300(a), (b), (c), (d), 302

Azizah bt Ahmad (Deputy Public Prosecutor) for the prosecution.
Shan Theivanthiran (Thevin Chandran & Associates) for the accused.

Choong Siew Khim JC:

[1] The accused, Oi Lai Seng, was charged as follows:

> Bahawa kamu pada *26 Mei 2001*, lebih kurang jam *4.15 pagi di KM 350.1 Lebuhraya Utara Selatan, Sungkai* di dalam Daerah Batang Padang, di dalam Negeri Perak, telah melakukan pembunuhan dengan menyebabkan kematian *IBRAHIM BIN SELAMAT, K/P NO. 590319-01-5769*. Oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[2] Sections 299 and 300 of the Penal Code are the defining sections.

> 299 Culpable homicide.
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> Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.
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> 300 Murder.
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> Except in the cases hereinafter excepted, culpable homicide is murder —
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> (a) if the act by which the death is caused is done with the intention of causing death;
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> (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;

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(c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

(d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

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[3] After finding that the prosecution had established a prima facie case against the accused, his defence was heard at the end of which I decided he had failed to raise a reasonable doubt on the prosecution case. The accused was found guilty of the offence as charged and having convicted him, I imposed the death sentence on him. The provisions of s 180(1), (3) and (4) and s 182A(1) and (2) of the Criminal Procedure Code were applied and followed. In the process, I had subjected the prosecution evidence to a maximum evaluation (see *Looi Kow Chai & Anor v Pendakwa Raya* [2003] 2 MLJ 65; [2003] 1 CLJ 734) while being mindful of what was spelt out by the Federal Court in *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 CLJ 85:

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> The test at the close of the case for the prosecution would therefore be: Is the evidence sufficient to convict the accused if he elects to remain silent? If the answer is in the affirmative then a prima facie case has been made out. This must, as of necessity, require a consideration of the existence of any reasonable doubt in the case for the prosecution. If there is any such doubt there can be no prima facie case.

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[4] It was for the prosecution to prove these ingredients under s 302:

(a) that the victim, Ibrahim bin Selamat, was dead;

(b) that his death was caused by injury or injuries inflicted on him;

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(c) that the accused had caused such injury or injuries which resulted in the deceased's death; and

(d) that the act causing the death was commited with the mens rea under s 300(a), (b), (c) or (d) (see *Sainal Abidin Mading v Public Prosecutor* [1999] 4 MLJ 497; [1999] 4 CLJ 215 and *Public Prosecutor v Norazam Ibrahim* [2006] 8 CLJ 462.

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DEATH OF VICTIM (IBRAHIM BIN SELAMAT)

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[5] This fact was not disputed. The wife of the deceased (Faridah bt Jusoh, SP10) identified her dead husband at the Tapah Hospital where the post-mortem was conducted by Dr Khairul Azman bin Ibrahim (SP4) on 26 May 2001.

[6] SP10 and SP4 also identified the deceased in photographs P5A-G.

INJURY INFLICTED ON DECEASED

[7] The post-mortem report, P7, prepared by SP4 indicated that Ibrahim bin Selamat died as a result of a gunshot wound to his chest. An oval shaped entry gunshot wound on the left chest, above and medial to left nipple measuring 0.9 x 0.6 cm was the only injury noted on his body. This gunshot wound injured his heart and aorta. His chest cavity contained 2000 ml of blood. His pericardial sac also contained blood. There was no exit wound.

INJURY CAUSED BY THE ACCUSED?

[8] There were two eye witnesses to the incident that led to the death of the deceased. They were SP10 and SP5, the daughter of the deceased (Una Diyana bt Ibrahim).

[9] The evidence adduced revealed that on 25 May 2001 at about 11pm the deceased together with his family comprising his wife ('SP10') and two daughters ('SP5') and Una Azlina bt Ibrahim (who was not called as a witness but offered to the defence at close of prosecution case) travelled from Kulim, Kedah, to visit his mother at Tangkak, Johore in a Proton Wira Aeroback PER 1101. The deceased drove the car. SP10 sat in front while their two daughters were seated at the back.

[10] In the course of the journey along the North-South Highway, the deceased stopped at the rest area at Ladang Bikam to visit the toilet (see photographs P4(F-I)). When SP10 woke from her sleep, she saw her husband walking towards their car and at the same time saw the accused enter the car by the right back door. SP5 awoke when her sister was squeesed against her when the accused entered the car and sat on the right side of the back seat. SP5 and SP10 could see the accused's face by the lighting at the rest area. SP5 saw the accused who was armed with a pistol fire a warning shot inside the car. SP10 heard the shot too.

[11] The accused then told the deceased to proceed towards the South after saying that he was a robber. Along the way, the accused ordered SP10 to hand over to him the gold items she wore together with other valuables. SP5 heard the accused ordering her father to turn over his wallet to him. The accused subsequently instructed the deceased to stop the car on the road shoulder near km 350.1 of the Highway. The family was told to alight from the car after which SP5 and SP10 heard the deceased asking the accused to return to him his identity card and driving license. At that time, the deceased and the accused were outside the car near the driver's side. Subsequently, SP5 and SP10 heard

A the sound of two shots being fired from the direction and position of both the accused and the deceased. SP10 saw her husband walk towards her as if he was going to fall and he fell into her arms when she went to get him. The deceased did not say anything except uttered the word 'Allahuakbar' after which he closed his eyes as if asleep.

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[12] As for the accused, he drove off in the car towards the South leaving the family by the side of the Highway. SP10 confirmed that at the material time when the incident happened, it was only her family and the accused who were by the side of the Highway. Photographs P4(F-I) show the rest area at Ladang C Bikam while P3(A-F) were taken of the scene where the deceased was shot dead.

[13] I found the testimony and account of both SP10 and SP5 to be D consistent and credible about what happened on that fateful early morning. They did not miss a beat when they unhesitatingly identified the accused as the male Chinese who had robbed them and drove off with their car after they heard the sound of shots fired. SP5 was very certain it was the accused she saw who had entered their car. She also saw a pistol in the accused's hand inside the E car when she awoke from her sleep. P22 (identification parade report) is a confirmation that the accused was identified by SP5 and SP10 at an identification parade held on 23 July 2001.

[14] Tan Han Hooi (SP6), a chemist then attached to the Chemistry F Department of Malaysia, Ipoh, examined the sports shirt worn by the deceased (exh P10B identified by SP7, the medical assistant who assisted SP4 during the post-mortem) and found at the left chest area a circular hole bearing lead and of a size consistent with that made by a lead bullet of.32 calibre. His report is P91. He explained that the dimension of the hole was approximately 8 mm. G According to SP6,.32 is in inches and when converted to mm. is about 8 mm.

[15] The accused was arrested on 13 July 2001 at the Bukit Kayu Hitam Immigration Complex, Kedah, by SP9. The car PER 1101 was found at Genting Highlands after the incident. SP12 (ASP Loo Chin Tien) discovered a H revolver type cobra.32 colt (P23B) bearing Serial No A98579 from an area in Bukit Mertajam on 18 July 2001 (see photographs P30(A-O)) after being led there by the accused based on s 27 of the (Evidence Act) information (P29A) which was recorded in his note-book (P29).

I **[16]** SP11 (Pua Hiang, a retired chemist last attached to the Chemistry Department, Petaling Jaya) found the revolver P23B to be in good working condition when he test-fired it. He said a.32 revolver could only fire a.32 calibre cartridge or live round. He was unable to determine whether the bullet marked S11 (ie P16B which is an expended lead bullet recovered from the body

of the deceased) was fired from P23B (see his report P26). He however qualified this by stating in court that he found some lines on P16B similar to those on the test-fired bullets (P24D(1–5) from test-firing revolver P23B although they were insufficient for him to draw a conclusion as to whether or not the said bullet marked S11 was fired from P23B.

[17] Nonetheless after having assessed and evaluated the evidence adduced in totality by the prosecution, I found that the accused was the one and only culprit who had caused the fatal injury on the deceased.

MENS REA

[18] SP4, the forensic pathologist, testified that survival was very slim based on the injury suffered by the deceased. He described the injury in detail:

> Internal examination of the wound showed that the bullet entered the chest cavity through the anterior chest at left third intercostal space just above the left 4 ribs. It then penetrated the upper part of pericardial sac, then into the left atrium, then through the ascending aorta and causing it to rupture. The bullet then penetrated out through the right lateral surface of the descending aorta into the right chest cavity. It then entered the right posterior chest wall at the level of right 5 intercostal space and finally embedded into the adjacent subcutaneous tissue.

[19] As a result of his post-mortem examination, SP4 did not find that the deceased suffered from any other disease that could have caused his death. SP4 was also of this opinion:

> Pada pendapat saya, ia boleh mati kurang dari 5 minit selepas mengalami tembakan pada jantung dan aorta.

[20] In *Tan Chee Wee v Public Prosecutor* [2004] 1 SLR 479 at pp 488–489, Yong Pung How CJ clearly set out the differences between mens rea under s 300(c) versus s 300(a) when delivering the judgment of the Court of Appeal in an appeal against conviction and death sentence for murder:

> Mens rea
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> The prosecution had in this case proceeded on both limbs (a) and (c) of s 300, The key difference between these two provisions is one of intention. Section 300(a) provides that the act by which the death is caused must be done with the intention of causing death. In contrast, the mens rea required under s 300(c) is lower in that the intention need only be to cause bodily injury and that bodily injury so inflicted is sufficient in the ordinary course of nature to cause death. Section 300(c) thus envisions that the accused subjectively intends to cause a bodily injury that is objectively likely to cause death in the ordinary course of nature. There is no necessity for the accused to have considered whether or not the injury to be inflicted

would have such a result. It is in fact irrelevant whether or not the accused did intend to cause death, so long as death ensues from the bodily injury or injuries intentionally caused. This was stated clearly in *Tan Joo Cheng v Public Prosecutor* [1992] 1 SLR 620 where S Rajendran J delivering the judgment of this court adopted the judgment of Bose J in *Virsa Singh v State of Punjab* AIR (45) 1958 Supreme Court 465 at p (16) that:

> *The question is not whether the prisoner intended to inflict the serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present.* If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. *Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.* (Emphasis added.)

As such, in examining whether s 300(c) has been made out, the court's approach to mens rea is only to determine whether the accused had intended to cause the injury that resulted in the victim's death. This approach has been articulated in *Virsa Singh v State of Punjab* at p (12) that:

> [*490]
> To put it shortly, the prosecution must prove the following facts before it can bring a case under s 300 'thirdly';
> First, it must establish, quite objectively, that a bodily injury is present;
> Secondly, the nature of the injury must be proved. These are purely objective investigations.
> Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and,
> Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

[21] These salient aspects of the evidence were duly considered in line with the submissions of the learned deputy public prosecutor:

(a) when the accused entered and sat in the car, he was already armed with a firearm from which he fired a warning shot although it did not hit anyone then;

(b) the deceased was not armed when he asked the accused to return his identity card and driving license. There was no evidence to suggest that there was provocation and/or a struggle ensued between the deceased and the accused; and

(c) the shot was aimed at and hit a vital part of the deceased's body which injured his heart and aorta. The proximity between the deceased and the accused prior to the deadly shot was a relevant factor to consider too.

[22] A loaded firearm is a dangerous weapon which can cause death if a shot is released and it could be inferred from the act of the accused in bringing along a gun with him in the course of robbing the deceased and his family that he would use it if and when necessary. The evidence and circumstances showed that he intended to inflict the gun-shot injury.

[23] Coupled with the fact that the deceased probably died less than five minutes after the shot, it was hence established that the gun-shot wound on the left chest of the deceased was sufficient to cause death in the ordinary course of nature under s 300(c) as relied upon by the prosecution.

[24] It followed that a prima facie case had been made out against the accused who was called to enter his defence. He elected to give evidence on oath.

DEFENCE CASE

[25] This is the substance of his defence. On that particular night, he was on his way home to Seberang Prai from Genting Highlands driving northwards and along the way, he stopped at a rest area because he encountered a problem with the gear-box of his car. He proceeded to smoke syabu. This made him dreamy ('menjadi khayal') after which he walked and crossed over to the Ladang Bikam rest area which is on the other side of the Highway. He decided to hitch a ride to Kuala Lumpur.

[26] He approached the deceased who refused to give him a lift. He forced his way into the car through the right rear door which was not locked.

[27] There was no denial he had a pistol on him. He however explained that the pistol suddenly went off inside the car. He said he was in a panicky state and did not know how he had pressed the hammer of the pistol. He panicked because he was alone and in a dreamy state after having taken syabu.

[28] He went on to testify that after announcing his intention to rob, he ordered the deceased to drive for a distance of about 15km before stopping. He

ordered the deceased and passengers to hand over their belongings ie money, hand-phone and gold jewellery as well as to get out from the car. The deceased asked something from him, he was not sure what and while he was looking for the deceased's wallet which he held in his left hand with the other items handed over, he saw the deceased walking towards him. He panicked and let off two shots in a downward direction ('ke arah bawah') from the pistol he was holding in his right hand. He again explained that he panicked because he was alone, in a 'khayal' state and very frightened. He also said he did not know why and how the two shots were fired. He did not know where the two shots went. He did not know that the deceased was hit by a shot.

[29] When cross-examined, the accused agreed that the deceased spoke in a nice way when he requested for his belongings to be returned to him. He also agreed that the deceased did not use any weapon on him, did not raise his voice or threaten him. There was no altercation between them. The accused admitted that he ordered the deceased to stop in a quiet and secluded area.

[30] After considering the evidence for the defence, it was my view that the defence was a total confirmation of the prosecution case which further strengthened it without casting any reasonable doubt whatsoever. The essence of the defence in fact corroborated the testimony of the material witnesses except that he attempted to justify his action by blaming on his state of panic and fear caused by syabu and by the fact that he was alone. If that had been so, it would have deterred him from even crossing over to the other side of the Highway with the obvious intention to rob the first available car he could pounce on. There was also no reason or justification for him to panic as he, on his own admission, was much bigger sized than the deceased, who did not provoke him in any manner and who had duly complied with his instructions without any resistance. Besides there was no one else at the scene except for the deceased and his family of three females.

[31] In such circumstances and contrary to his allegation of the syabu effect on him, his evidence on the whole and admission of certain facts showed that there was purposeful deliberation and intention on his part when he decided to return to where he had come from and the means he used to facilitate this by robbing the deceased and his family of valuables and making off in their car after letting off two shots. The deceased did not provoke or resist and there was no necessity to fire any shot in such circumstances. To cap it, the accused had, in my opinion, conveniently denied any knowledge when he testified that he did not know the deceased was hit although he had shot at close range when the deceased stood a mere 3–4ft from him based on his own evidence. There were no circumstances to show otherwise, that the accused was probably in such a state that he did not know or was not aware of what he was doing.

[32] I thus found the conduct of the accused before, during and after the commission of the offence was consistent with the conduct of one who was conscious of what he was doing so as to be capable of forming the intention defined under s 300(c) of the Penal Code.

[33] By analogy, the case of *Chan Kwee Fong v Public Prosecutor* [2010] 1 MLJ 411 at p 446; [2010] 3 CLJ 671 at p 672 was referred to:

> (2) In order to determine whether the accused was, by reason of intoxication, rendered temporarily insane at the time he stabbed the victim — such that he could not have formed the intention to cause those bodily injuries — the conduct of the accused prior to, during and after the commission of the said offence would be highly relevant. The trial judge had correctly appreciated the known relevant facts and the totality of the suixounding circumstances which showed that the accused was not intoxicated to such an extent that he did not know what he was doing. At the time of the commission of the offence, the accused was conscious of his surroundings and was capable of forming the intention as defined under s 300(c) of the Penal Code.. The trial judge was therefore right in holding that the defence of intoxication under either ss 85(2)(b) or 86(2) of the Penal Code had not been established on a balance of probabilities.

CONCLUSION

[34] Based on the above, I came to the conclusion that the prosecution had proved its case beyond reasonable doubt the charge under s 302 against the accused. He was found guilty and convicted of the offence. Death being the mandatory sentence, he was sentenced to hang by the neck till he is dead.

Accused convicted of murder under s 302 of the Code and sentenced to death.

Reported by Kohila Nesan